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**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA**

NATIONAL FAIR HOUSING ALLIANCE, et al.,)
Plaintiffs,)
v.)
A.G. SPANOS CONSTRUCTION, INC., et al.)
Defendants.)

C.A. No. C07-3255-SBA

Hearing Date: Sept. 23, 2008
Time: 1:00 p.m.
Dept: Courtroom 3

**THE UNITED STATES OF AMERICA'S
MOTION FOR LEAVE TO FILE AMICUS BRIEF**

The United States of America hereby moves this Court for leave to file the attached brief (Exhibit A) as *amicus curiae* to assist the Court in ruling on Defendants' Motion for Reconsideration. (Doc. 120.)

In their motion, Defendants request that this Court reconsider its April 4, 2008 Order denying their motion to dismiss in light of the Ninth Circuit Court of Appeals subsequent *en*

1 *banc* decision in *Garcia v. Brockway*, 526 F.3d 456 (9th Cir. 2008), *petition for cert. filed*, 2008
2 WL 3165825 (U.S. Jul. 31, 2008) (No. 08-140). As set forth more fully in our *amicus* brief, we
3 request that this Court deny Defendants’ motion and affirm its April 4, 2008 Order because
4 *Garcia* does not address the statute of limitations questions raised in this case.

5 The United States has important enforcement responsibilities under the FHA. For
6 instance, the Attorney General may initiate civil proceedings on behalf of the United States in
7 “pattern or practice” cases, 42 U.S.C. § 3614(a), or on behalf of an aggrieved person, following a
8 determination by the Department of Housing and Urban Development (“HUD”) of reasonable
9 cause and an election by either the complainant or respondent to a complaint of housing
10 discrimination filed with HUD to proceed in federal court. *See* 42 U.S.C. § 3612(o).¹
11 Furthermore, under the FHA private litigation is an important supplement to government
12 enforcement. *See Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 211 (1972); 42 U.S.C.
13 § 3616a (authorizing the Secretary of HUD to contract with private, non-profit fair housing
14 organizations to conduct testing, investigation, and litigation under the FHA). Permitting
15 persons to appear as friends of the court through the filing of *amicus* briefs “can contribute to [a]
16 court's understanding” of the issues involved in a particular lawsuit. *Harris v. Pemsley*, 820
17 F.2d 592, 603 (3d Cir. 1987); *San Francisco NAACP v. San Francisco Unified School Dist.*, 59
18 F. Supp. 2d 1021, 1033 (N.D. Cal. 1999).

19 On September 2, 2008, we attempted to consult with counsel for plaintiffs and defendants
20 regarding the filing of this brief. Counsel for the plaintiff Thomas Keary stated he did not object
21 to the United States’ motion. Counsel for Knickerbocker Properties, Inc., Stephen Walters also
22 represented that he had no objection to the United States’ motion. Counsel for the United States
23 spoke with Thomas Keeling, who represents the A.G. Spanos Defendants, and exchanged

24 ¹ HUD has also been charged with providing technical assistance to implement the
25 requirements of Section 804(f)(3)(C), *see* 42 U.S.C. § 3604(f)(5)(C), and issuing rules to
26 implement the Act. 42 U.S.C. § 3614a. To that end, HUD has issued regulations, 24 C.F.R.
27 §100.205, implementing the accessibility provisions of the Act, and more detailed Fair Housing
28 Accessibility Guidelines. *See* 56 Fed. Reg. 9472 (Mar. 6, 1991).

voicemail messages with Shirley Jackson, who represents Defendant Highpoint Village. Neither were able to indicate their clients' position before the United States filed its motion.

The United States further requests that if the Court entertains oral argument from the parties it be allowed to participate. For these reasons, we request the Court to direct the Clerk to file the attached brief. A proposed order is attached as Exhibit B.

Respectfully submitted,
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Dated: September 2, 2008

CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2008, I electronically filed this Motion with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

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